

BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA

GAIL J. ANDERSON, Administrator, REAL
ESTATE DIVISION, DEPARTMENT OF
BUSINESS & INDUSTRY, STATE OF
NEVADA,

Petitioner,

vs.

COTTONWOOD COURT TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.;
ANN TISUE; GILBERT TISUE; and
WILLIAM MASTON,

Respondents.

Case No. IN-1620

FILED

JUN 17 2014

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

**COMPLAINT FOR DISCIPLINARY
ACTION AND NOTICE OF HEARING**

The Real Estate Division of the Department of Business and Industry, State of Nevada ("the Division"), by and through its counsel, Catherine Cortez Masto, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby notifies Respondents COTTONWOOD COURT TOWNHOMES HOMEOWNERS' ASSOCIATION, INC., ANN TISUE, GILBERT TISUE, and WILLIAM MASTON (collectively the "Respondents") of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and Chapters 116 and 116A of the Nevada Revised Statutes ("NRS") and Chapter 116 and 116A of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENTS pursuant to the provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS 116.790.

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JURISDICTION AND NOTICE

1. ANN TISUE, GILBERT TISUE, and WILLIAM MASTON are, and were at all relevant times mentioned in this complaint, members of the executive board for COTTONWOOD COURT TOWNHOMES HOMEOWNERS' ASSOCIATION, INC. (the "Association") located in Carson City, State of Nevada.

2. The executive board members and the Association are subject to the provisions of Chapter 116 of each the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and the Commission for Common Interest Communities pursuant to the provisions of NRS 116.750.

3. On or about September 20, 2012, the Association submitted Reserve Study Summary Form #609 to the Division. The form indicates that the Association does not have a separate reserve account. A referral was made to the Division's Common-Interest Communities and Condominium Hotels compliance section for investigation.

FACTUAL ALLEGATIONS

4. By letter dated November 2, 2012, the Division notified RESPONDENTS ANN TISUE, GILBERT TISUE, and WILLIAM MASTON that the Division was investigating a possible violation of NRS 116.31152 based on the Reserve Study Summary Form #609 submitted on behalf of the Association.

5. The Association's attorney responded to the Division.

6. Through its attorney, the Association contends that it does not need to maintain a separate reserve account in accordance with NRS 116.31152, because while there are 13 residential units, there are only two owners.

7. The owners agreed to pay for repair and replacement of major components through one-time assessments as the expense occurs.

8. The Association does not have a reserve study.

9. The Association does not fund a reserve account.

10. By letter dated May 3, 2013, the Division demanded that the Association hire a

community manager and fully comply with NRS 116 regarding reserve studies, reserve funding, budgets and meetings within 60 days.

11. By letter dated July 1, 2013, the Association, through its attorney, agreed to comply with the demand letter as to hiring a community manager, but asked for more time. The Association did not agree that it needs to have a reserve study and stated that it wished to preserve its right to have the matter heard by this Commission.

12. To date, the Association is not managed by a community manager, does not have a current reserve study, and does not maintain a reserve account.

VIOLATIONS OF LAW

13. RESPONDENTS ANN TISUE, GILBERT TISUE, and WILLIAM MASTON violated NRS 116.3103 (through NAC 116.405(3)) by failing to comply with NRS 116.3115(2)(b) and NRS 116.31152 which amounts to incompetence, negligence or gross negligence.

14. RESPONDENTS ANN TISUE, GILBERT TISUE, and WILLIAM MASTON violated NRS 116.3103 (through NAC 116.405(8)(a)) by failing to cause the Association to comply with the requirements of NRS 116.3115(2)(b) and NRS 116.31152 in that the Association does not have adequate reserves funded on a reasonable basis or a reserve study.

DISCIPLINE AUTHORIZED

Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS 116.790 the Commission has discretion to take any or all of the following actions:

1. Issue an order directing RESPONDENTS to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.
2. Issue an order directing RESPONDENTS to take affirmative action to correct any conditions resulting from the violation.
3. Impose an administrative fine of up to \$1,000 for each violation by RESPONDENTS.
4. IF ANY RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND WILLFULLY COMMITTED A VIOLATION of Chapter 116 AND it is in the best interest of the

Association, such RESPONDENTS may be removed from their positions as directors and/or officers.

5. Require RESPONDENTS to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.

6. Take whatever further disciplinary action as the Commission deems appropriate.

The Commission may order one or any combination of the discipline described above.

If the Commission finds that the RESPONDENTS knowingly and willfully violated the provisions of Chapter 116, the Commission may order that RESPONDENTS be personally liable for all fines and costs imposed.

NOTICE OF HEARING

PLEASE TAKE NOTICE, that a disciplinary hearing has been set to consider this Administrative Complaint against the above-named RESPONDENTS in accordance with Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters 116 and 116A of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE on August 26-28, 2014, beginning at 9:00 a.m. each day or until such time as the Commission concludes its business. The Commission meeting will be located at the Legislative Building, 401 S. Carson St. Room 2134, Carson City, Nevada 89701, beginning at 9:00 a.m. each day or until such time as the Commission concludes its business. The meeting will be video conferenced to the Grant Sawyer Building, 555 E. Washington Ave. Room 4412, Las Vegas, Nevada 89101.

STACKED CALENDAR: Your hearing is one of several hearings that may be scheduled at the same time as part of a regular meeting of the Commission. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as if all allegations in the complaint were true. If you need to negotiate a more specific time for your

1 hearing in advance because of coordination with out of state witnesses or the like, please call
2 Claudia Rosolen, Commission Coordinator, at (702) 486-4606.

3 YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an
4 open meeting under Nevada's open meeting law, and may be attended by the public. After
5 the evidence and arguments, the commission may conduct a closed meeting to discuss your
6 alleged misconduct or professional competence. A verbatim record will be made by a certified
7 court reporter. You are entitled to a copy of the transcript of the open and closed portions of
8 the meeting, although you must pay for the transcription.

9 As a RESPONDENT, you are specifically informed that you have the right to appear
10 and be heard in your defense, either personally or through your counsel of choice. At the
11 hearing, the Division has the burden of proving the allegations in the complaint and will call
12 witnesses and present evidence against you. You have the right to respond and to present
13 relevant evidence and argument on all issues involved. You have the right to call and
14 examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter
15 relevant to the issues involved.

16 You have the right to request that the Commission issue subpoenas to compel
17 witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
18 may be required to demonstrate the relevance of the witness' testimony and/or evidence.
19 Other important rights and obligations, including your obligation to answer the complaint, you
20 have are listed in NRS Chapters 116 and 116A and NAC 116 and 116A, including without
21 limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS
22 Chapter 233B.

23 Note that under NAC 116.575, not less than five (5) working days before a hearing,
24 RESPONDENTS, and each of them, must provide to the Division a copy of all reasonably
25 available documents that are reasonably anticipated to be used to support his or her position,
26 and a list of witnesses RESPONDENTS, and each of them, intend to call at the time of the
27 hearing. Failure to provide any document or to list a witness may result in the document or
28 witness being excluded from RESPONDENTS' defense. The purpose of the hearing is to

1 determine if the RESPONDENTS or any of them have violated the provisions of NRS 116 or
2 NAC 116, and to determine what administrative penalty is to be assessed against
3 RESPONDENTS.

4 DATED this 13th day of June 2014.

5 REAL ESTATE DIVISION
6 DEPARTMENT OF BUSINESS & INDUSTRY
7 STATE OF NEVADA

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9 GAIL ANDERSON, Administrator

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